

98- 9070

Rec Fee	53.00
AU2	2.00
NCO	51.00
COP	9.00
Cash	115.00

Shell

Recorded
Official Records
County of
Santa Barbara
Kenneth A Pettit
Recorder

10:57am 29-May-98

CARD CC 17

1 RECORDING REQUESTED BY:

Aera Energy LLC

2 ATTN: Mr. T.E. Enders

3 P.O. Box 11164

Bakersfield, CA 93389-1164

5 WHEN RECORDED, MAIL TO:

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

6 5796 Corporate Avenue

7 Cypress, CA 90630

ATTN: Ms. Nennet Alvarez, Chief

8 Site Mitigation Cleanup Operations

Southern California - Branch B

FE-2049

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Aera Energy LLC (Formerly Shell Western E&P Inc.)/

Hercules Gas Plant Site

AND TERMINATION OF COVENANT TO RESTRICT USE OF
PROPERTY BETWEEN SHELL WESTERN E&P INC./HERCULES GAS PLANT SITE AND
DEPARTMENT OF TOXIC SUBSTANCES CONTROL, RECORDED

FEBRUARY 18, 1992

16 This Covenant and Agreement ("Covenant") is made on the 12th day of17 May,

1998, by and between Aera Energy LLC,

18 successor-in-interest to Shell Western E&P Inc., ("Covenantor"), who

19 is the owner of record of certain property situated in the County of

20 Santa Barbara, State of California, described in Exhibit "A" attached

21 hereto and incorporated herein by this reference (the "Property") and

22 the Department of Toxic Substances Control (the "Department").

23 Pursuant to Civil Code Section 1471(c), the Department has determined

24 that this Covenant is reasonably necessary to protect present or

25 future human health or safety or the environment as a result of the

26 presence on the land of hazardous materials as defined in Health and

27 Safety Code ("H&SC") Section 25260. The Covenantor and the Department,

collectively referred to as the "Parties", therefore, intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 56 acres is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The property is located approximately 18 miles west of Goleta, at 14730 Hwy 101, Goleta, in Santa Barbara County, California 93117. This property is more specifically described as Santa Barbara County Assessor's Parcel No: 081-150-015. The Covenantor was remediating the Property under the supervision and authority of the Department. A portion of approximately 13 acres was remediated following a Remedial Action Plan pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. Because hazardous substances, as defined in H&SC Section 25316, which are also hazardous materials as defined in H&SC Section 25260, including benzene, toluene, xylenes, mercury and polychlorinated biphenyls (PCB's) remain in the soil and groundwater in and under portions of the Property, the Remedial Action Plan provided that a deed restriction would be required as part of the site remediation. A Covenant to Restrict Use of Property was recorded February 18, 1992 (1992 Covenant). The Department circulated the Remedial Action Plan, which contained a Final Health Risk Assessment, together with a Draft Negative Declaration pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq. for public review and

1 comment. The Remedial Action Plan and the Negative
2 Declaration/Environmental Impact Report were approved by the
3 Department on May 6, 1994. Excavation and offsite disposal was
4 selected as the preferred remediation approach. The response action
5 also included the installation and operation of groundwater monitoring
6 wells. The locations of the monitoring wells are shown on the
7 attached map (Map #1). The operation and maintenance of the
8 groundwater monitoring wells is pursuant to an Operation and
9 Maintenance Manual incorporated into the Enforceable Agreement-
10 Remediation Monitoring Plan (EA-RMP) between Covenantor and the
11 Department dated September 2, 1997.

12
13 1.02. As detailed in the Final Health Risk Assessment as approved by
14 the Department in October, 1992, subsurface soils and the groundwater
15 contain hazardous substances, as defined in H&SC Section 25316, which
16 include the following contaminants of concern: benzene, toluene,
17 ethylbenzene, xylenes, mercury and polychlorinated biphenyls (PCB's).
18 The Department concluded that the Property, as remediated, and subject
19 to the restrictions of this Covenant, does not present an unacceptable
20 threat to human health or safety or the environment, if extraction of
21 the perched groundwater contained in the Fill Pad is prohibited.
22 Contaminants in the perched water include benzene (2,300 µg/l and
23 PCB's (22 µg/l).

24 California drinking water standards are: Benzene at 1 µg/l and PCB's
25 at 0.5 µg/l. The Department concludes that, if extracted, the perched
26 groundwater presents an unacceptable threat to human health and
27 safety.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of this property.

2.04. Fill Pad. "Fill Pad" means the 3.99 acre parcel of land described in Exhibits "B" and "C", attached hereto.

2.05. Improvements. "Improvements" means all buildings, roads, driveways, regradings and paved parking areas, hereafter, constructed or placed upon any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed.

Each and every Restriction:

(a) runs with the land pursuant to H&SC Section 25355.5 (a)(1)(c) and Civil Code Section 1471;

(b) inures to the benefit of and passes with each and every portion of the Property;

(c) shall apply to and bind the respective successors in interest to the Property;

(d) is for the benefit of, and is enforceable by the Department, and is imposed upon the perched water contained in a portion of the Property known as the "Fill Pad".

3.02. Binding Upon Owners/Occupants. Pursuant to H&SC Section 25355.5

(a)(1)(c), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors and assignees. Pursuant to Civil Code Section 1471 (b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of Release of Hazardous Substances. Prior to the sale, lease or sublease of the Property, the owner, lessor, or sublessor shall give the buyer, the lessee, or sublessee notice that hazardous substances are located beneath the Property, as required by H&SC Section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

1 3.05. Conveyance of Property. Covenantor agrees that the Owner shall
2 provide notice to the Department no later than thirty (30) days after
3 any conveyance of any Ownership interest in the Property (excluding
4 mortgages, liens, and other non-possessory encumbrances). The
5 Department shall not, by reason of this Covenant, have authority to
6 approve, disapprove, or otherwise affect proposed conveyance, except
7 as otherwise provided by law, by administrative order, or by a
8 specific provision of this Covenant.

10 ARTICLE IV

11 RESTRICTIONS

12 4.01. Prohibited Activities. The following activity shall not be
13 conducted at the Property:

14
15 Extraction of perched water at the Fill Pad for purposes other than
16 site remediation and monitoring as authorized by the Department.

17
18 4.02. Notice in Agreements. All Owners and Occupants shall execute a
19 written instrument, which shall accompany all purchase, lease,
20 sublease, or rental agreements relating to the Property. The
21 instrument shall contain the following statement: "NOTICE: Real
22 property subject to this agreement is covered by a recorded Covenant
23 to Restrict Use of Property prohibiting pumping of perched water
24 contained in a portion of the property known as the "Fill Pad". The
25 restriction is based on upon hazardous substances contamination in the
26 Fill Pad making that portion of the property subject to the
27 requirements of Chapter 6.5 and Chapter 6.8 of Division 20 of the

1 California Health and Safety Code. This Notice is not a declaration
2 that a hazard exists and does not address the liability of any
3 person".

4
5 4.03. Access for Department. The Department shall have reasonable
6 right of entry and access to the Property for inspection, monitoring,
7 and other activities consistent with the purposes of this Covenant as
8 deemed necessary by the Department in order to protect the public
9 Health and Safety.

10
11 4.04. Access for Implementing EA-RMP. The entity or person responsible
12 for implementing the EA-RMP shall have reasonable right of entry and
13 access to the Property for purpose of implementing the EA-RMP for as
14 long as that agreement shall remain in full force and effect.

15
16 ARTICLE V

17 ENFORCEMENT

18 5.01. Enforcement. Failure of the Covenantor or Owner to comply with
19 any of the Restrictions specifically applicable to it shall be grounds
20 for the Department to require that the Covenantor or Owner modify or
21 remove any Improvements, constructed or placed upon any portion of the
22 Property in violation of the Restrictions. Violation of this Covenant
23 shall be grounds for the Department to pursue enforcement and/or
24 compliance by any means provided by applicable law.

25 ///

26 ///

27 ///

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

TERMINATION OF THE COVENANT RECORDED FEBRUARY 18, 1992

7.01. The Department finds that the hazardous waste that necessitated the imposition of the restrictions of the 1992 Covenant has been removed. The restrictions in this covenant are sufficient to protect human health, safety, and the environment. The Department hereby authorizes the termination of the Covenant to Restrict Use of Property between Shell Western E&P Inc., its successors and assigns and the California Environmental Protection Agency, Department of Toxic Substances Control recorded February 18, 1992 as Document Number 92-

010287 of the Official Records, County of Santa Barbara, pursuant to Article IV of the 1992 Covenant and H&SC Sections 25234 and 25235.

ARTICLE, VIII

MISCELLANEOUS

8.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

8.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

8.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Barbara within ten (10) days of the Covenantor's receipt of a fully executed original.

8.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Aera Energy LLC
ATTN: General Counsel
P.O. Box 11164
Bakersfield, CA 93389-1164

To Department: Department of Toxic Substances Control
Site Mitigation Cleanup Operations
Southern California Branch
1011 N. Grandview Avenue
Glendale, CA 91201

Any party may change its address or the individual to whose attention a Notice is being sent by giving written Notice in compliance with this paragraph.

8.05. Partial Invalidity. If any portion of the Restrictions or other terms set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid has not been included herein.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

COVENANTOR
Aera Energy LLC

BY: J. E. Enders

Its Attorney-In-Fact

RAC

DATE: 5/11/98

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

BY: Nerax V. Alvarez

DATE: 5/12/98

EXHIBIT A

A portion of the Division of the Pedro Baron Ranch, being part of the Rancho Nuestra Senora del Rufugio as shown on a map filed in the office of the County Recorder of said Santa Barbara County, State of California, in Book 13, page 98 of Maps and Surveys and more particularly described as follows:

Beginning at a point on the Westerly line of the above described property said point being the Northerly terminus of that course bearing S 50°19' W 100.0 feet as shown on said filed map; thence continuing along said West line N 32°30'27" E 95.68 feet; thence N 12°59'15" E 72.08 feet; thence N 3°00'04" W 213.35 feet; thence N 2°18'02" E 380.91 feet; thence N 25°15'18" E 270.34 feet; thence N 3°58'04" E 422.70 feet; thence N 43°44'27" E 445.04 feet; thence leaving said West line East 829.40 feet; thence S 3°03'50" E 398.89 feet; thence S 12°48'28" E 176.26 feet; thence S 10°16'20" W 1175.04 feet; thence S 80°47'36" W 127.42 feet; thence S 11°34'14" W 345.65 feet; thence N 87°32'59" W 515.08 feet; thence N 11°20'28" W 242.16 feet; thence N 51°31'50" W 133.61 feet; thence N 88°16'30" W 342.48 feet to the point of beginning.

Exhibit B
(Legal Description)

A portion of land in the County of Santa Barbara, State of California, being a portion of the Rancho Nuestra Senora Del Refugio as shown on the "Map of Canada De La Pila" filed in the County Surveyor's Office as CS 1398. Said portion of land described as follows:

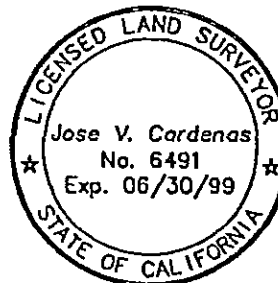
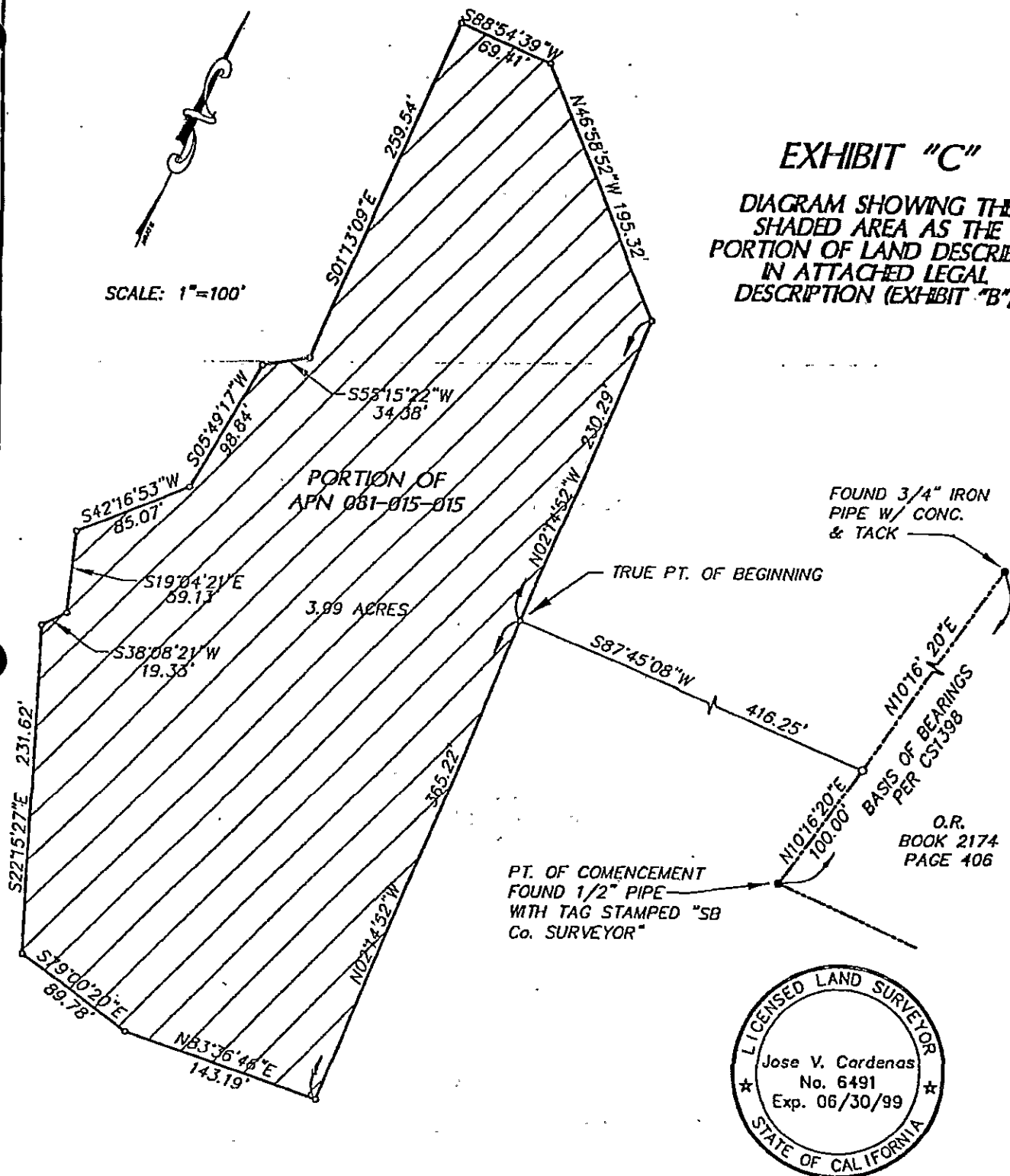
Commencing at a found half inch (1/2") pipe and tag stamped SB Co. Surveyor set at the southwesterly corner of the parcel conveyed to Santa Barbara County per Official Record, Book 2174, Page 406 as shown on said map, thence along the westerly property line of said parcel N 10°16' 20" E, 100.00 feet, thence; leaving said westerly property line S 87° 45' 08" W, 416.25 feet to the TRUE POINT OF BEGINNING of the portion of land herein described, thence;

1st N 02° 14' 52" W, 230.29 feet, thence;
2nd N 46° 58' 52" W, 195.32 feet, thence;
3rd S 88° 54' 39" W, 69.41 feet, thence;
4th S 01° 13' 09" E, 259.54 feet, thence;
5th S 55° 15' 22" W, 34.38 feet, thence;
6th S 05° 49' 17" W, 98.84 feet, thence;
7th S 42° 16' 53" W, 85.07 feet, thence;
8th S 19° 04' 21" E, 59.13 feet, thence;
9th S 38° 08' 21" W, 19.33 feet, thence;
10th S 22° 15' 27" E, 231.62 feet, thence;
11th S 79° 00' 20" E, 89.78 feet, thence;
12th N 83° 36' 46" E, 143.19 feet, thence;
13th N 02° 14' 52" W, 365.22 feet to the TRUE POINT BEGINNING.

A diagram of the portion of land herein described is shown on the attached Exhibit C.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: *Jose V. Cardenas*Date: 4/29/98



MNS MARTIN, NORTHAUT & SPENCER, INC.

CIVIL AND GEOTECHNICAL ENGINEERS • LAND SURVEYORS
CONSTRUCTION MANAGERS • MATERIALS TESTING
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MNS WO# 11565 • 1565EXB1.DWG • MSB/RLS • 04/98